

JOINT PUBLIC STATEMENT

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India: A year on, demand for justice for Father Stan Swamy's death in custody

On 5 July 2021, 84-year-old Jesuit priest and human rights defender Father Stan Swamy died in judicial custody at the Holy Family Hospital, in Mumbai, India. On the first anniversary of his death, we, the 13 undersigned international and national human rights organisations, remember Stan Swamy's decades-long commitment to realising the rights of Dalit and indigenous peoples in India, especially in Jharkhand State. We recall our demand for an independent and effective investigation into his death in custody and for the immediate and unconditional release of the 15 other prominent human rights defenders charged in the same case.

Stan Swamy founded the *Vistapan Virodhi Jan Vikas Andolan*, an all-India platform to secure and protect the land rights of Dalit and Adivasi peoples, and was a prominent advocate against their forced displacement, primarily linked to infrastructure projects and the mining of mineral-rich lands. He spoke out against the systemic discrimination and violence directed at the Adivasi community and he notably documented and advocated against the mass arrest of Adivasi youth, frequently accused by the authorities of being "Naxalites" or "Maoists" and of inciting terrorism and violence. It is this work that is his legacy, and also the reason for the reprisals against him. He supported and inspired the most marginalised and vulnerable communities in Jharkhand State to seek redress against violence and discrimination, and his persecution, arrest and ill-treatment in custody resulting in his death were direct reprisals for his peaceful work.

On 8 October 2020, the National Investigation Agency (NIA) in Ranchi, Jharkhand, arrested Stan Swamy for alleged links to the incident of caste-based violence that broke out during the Elgar Parishad commemoration at Bhima Koregaon, Maharashtra State, on 1 January 2018. Together with 15 other prominent human rights defenders, 13 of whom remain in pre-trial detention at this time, he was falsely accused and jailed in a case that has become widely known as the Bhima Koregaon-16 case or the BK-16 case¹.

At the time of his arrest, Stan Swamy was already suffering from Parkinson's disease, significant loss of hearing in both ears, and other serious underlying health issues. However, in his own words, his bodily systems "were very functional". Over the subsequent nine months in detention, poor

¹ The 15 other human rights defenders arrested in the Bhima Koregaon case are; Mr. Varavara Rao, Ms. Sudha Bharadwaj, Mr. Vernon Gonsalves, Mr. Gautam Navlakha, Mr. Arun Ferreira, Mr. Sudhir Dhawale, Mr. Rona Wilson, Ms. Shoma Sen, Mr. Anand Teltumbde, Mr. Mahesh Raut, Mr. Surendra Gadling, Mr. Hany Babu, Mr. Sagar Gorkhe, Mr. Ramesh Gaichor, and Ms. Jyoti Jagtap. At the time of writing, Mr. Varavara Rao and Ms. Sudha Bharadwaj have been released on temporary bail but could be recalled to prison at any time.

prison conditions, the Covid-19 pandemic, and the absence of adequate medical attention resulted in his deteriorating health. Initially, jail authorities denied him warm clothes and a sipper cup which he needed due to the effects of advanced Parkinson's disease. On 22 October 2020, a special NIA court denied his interim bail plea filed on medical grounds, despite the Covid-19 pandemic and national moves to reduce congestion in prisons, as well as the Supreme Court of India's own directives in this regard. In the second week of May 2021, his lawyers again petitioned the court for his release on medical grounds. At this point he was suffering from Covid-19 symptoms, but this request for bail was again denied.

When his condition became critical, Stan Swamy was eventually transferred from Taloja Central Jail to the Holy Family Hospital on 28 May 2021. There he tested positive for Covid-19 and remained in critical condition. He continued to be denied bail, despite his perilous health condition and lived in constant fear of being returned to Taloja Central Jail. Multiple requests for him to be transferred to his home state of Jharkhand so that he could be with his community were also denied. On 4 July 2021, Stan Swamy suffered a cardiac arrest, and died the following day, on 5 July 2021. His mental and physical suffering and eventual death are the direct consequences of his incarceration and denial of timely and effective medical treatment by authorities.

A year on, the lack of justice and accountability for Stan Swamy's death in custody and the continued indictment of the 15 other human rights defenders in the Bhima Koregaon case attest to the Indian authorities' disregard for human rights and the rule of law. The lack of action from the Indian government, the Indian courts, the National Human Rights Commission (NHRC) and the government and the jail administration of Maharashtra to ensure accountability for the death in custody of a prominent human rights defender also illustrates the impunity with which the executive operates. Furthermore, as of today, the Indian government has failed to respond to the Opinion released by the United Nations Working Group on Arbitrary Detention which contends that Stan Swamy's detention was arbitrary².

The Bhima Koregaon 16 case is just one example of the Indian authorities' increasing use of anti-terror legislation, particularly the 1967 Unlawful Activities (Prevention) Act (UAPA), to target and silence the country's human rights defenders³. This rising trend must cease immediately. The co-accused in the Bhima Koregaon 16 case, the majority of whom are of advanced age with underlying medical conditions, have remained in pre-trial detention for nearly four years, enduring repeated delays in commencing trial. Independent, credible and well-documented investigations into the computers of three of the accused revealed damning evidence of hacking, surveillance, and evidence tampering, allegedly supported by the Indian authorities⁴. According to these investigations, the evidence upon which the case against the Bhima Koregaon 16 is built, was

² A/HRC/WGAD/2021/57

³ Human rights defenders targeted by this anti-terror legislation and subjected to prolonged pre-trial detention include students and defenders from the Muslim minority community who participated in the Delhi protests against the controversial Citizenship Amendment Act 2019, journalist Siddique Kappan, women human rights defender Himde Markam, and Kashmiri human rights defender Khurram Parvez.

⁴ <https://thewire.in/rights/bhima-koregaon-activists-arrests-evidence-arsenal-consulting-stan-swamy>

planted on the accused persons' computers and devices, allegedly with the involvement of Indian police⁵.

On the first anniversary of Stan Swamy's unjust death in custody, India's international partners must press the Indian government to comply with its international human rights obligations to:

- promptly conduct an effective, independent, and impartial investigation into Stan Swamy's death in custody;
- grant compensation to his community for the rights violations he suffered;
- posthumously ensure his legal rehabilitation;
- ensure that those falsely accused in the Bhima Koregaon case are immediately released from unjust detention, ensured redress, and supported to continue their vital work as human rights defenders;
- end the use of repressive laws to crack down on civil society and amend them to bring them into line with international human rights law; and
- repeal the Unlawful Activities (Prevention) Act (UAPA).

The UN Special Rapporteur on the situation of human rights defenders, Mary Lawlor, stated in 2021 that Stan Swamy's death 'will forever remain a stain on India's human rights record'⁶. Despite his passing, Stan Swamy's spirit, courage and kindness continue to inspire Dalit and Adivasi communities to demand their rights. We, the undersigned, stand in solidarity with these communities and with all human rights defenders supporting them in this struggle.

Signatories⁷

ACI Participa (Honduras)

Amnesty International

Comité Cerezo (Mexico)

FIDH, within the framework of the Observatory for the Protection of Human Rights Defenders

Front Line Defenders

Global Witness

HRDA India

Karapatan Alliance Philippines

⁵ *ibid.*

⁶ <https://news.un.org/en/story/2021/07/1095892>

⁷ The organisations listed here are partners in the HRD Memorial; an initiative to gather and verify information on the cases of HRDs whose deaths are understood to be connected to their human rights work. The HRD Memorial aims include: (i) providing a basis for effective advocacy and campaigning to stop the killings of HRDs; (ii) keeping alive the memory of defenders, and celebrating their courage and achievements; and (iii) offering solidarity with HRDs' families, friends and colleagues.

El Programa Somos Defensores (Colombia)

Red Nacional de organismos Civiles de Derechos Humanos Todos los Derechos para Todos y Todas (Red TDT, Mexico)

SAS-e-Fekr Social and Legal Research Service Consultancy (Afghanistan)

Social Association of Afghan Justice Seekers (SAAJS) (Afghanistan)

World Organisation Against Torture (OMCT), within the framework of the Observatory for the Protection of Human Rights Defenders